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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 456

BEYS AFROYIM, PETITIONER

v.

DEAN RUSK, AS SECRETARY OF STATE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The majority and concurring opinions of the court of appeals (R. 12–19) are reported at 361 F. 2d 102 and 105. The opinion of the district court (R. 3–10) is reported at 250 F. Supp. 686.

JURISDICTION

The judgment of the court of appeals was entered on May 24, 1966 (R. 19). The petition for a writ of certiorari was filed on August 18, 1966, and was granted on October 24, 1966 (R. 20). The jurisdiction of this Court rests upon 8 U.S.C. 1254(1).

STATUTE INVOLVED

Section 401(e) of the Nationality Act of 1940, as amended, 54 Stat. 1137, 1168–1169, 58 Stat. 746, 8 U.S.C. 801 (1946 ed.), provided in pertinent part:

> A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:
>
> * * * * *
>
> (e) Voting in a political election in a foreign state or participating in an election or plebiscite to determine the sovereignty over foreign territory * * *[1]
>
> * * * * *

QUESTION PRESENTED

Whether Congress acted within its constitutional power in providing that a person shall lose his American nationality by voluntarily voting in a political election in a foreign state.

STATEMENT

Petitioner was born in Poland in 1893; he emigrated to the United States in 1912 and became a naturalized American citizen in 1926 (R. 11). He went to Israel in 1950, and, on July 30, 1951, he voluntarily voted in the election for the Second Knesset, the national parliament of Israel. The stipulation filed in the district court recites that this was a political election in a foreign state within the meaning of Section 401(e) of the Nationality Act of 1940 (R. 11).[2] Petitioner's

[1] Section 401(e) was reenacted (with certain additions not here material) as Section 349(a)(5) of the Immigration and Nationality Act of 1952, 66 Stat. 163, 267-268, 8 U.S.C. 1481 (a)(5).

[2] The stipulation further sets out petitioner's claims that, neither at the time of the Israeli election nor at any other time, did he desire or intend to abandon or lose his American citizenship and that he has considered himself at all times an American citizen. Respondent refused to stipulate to the truthful-

Israeli identification booklet indicates that he also voted in the elections for the Third and Fourth Knessets, in 1955 and 1959, and in municipal elections in those years (R. 1–2).

On November 14, 1960, the American Vice Consul at Haifa, Israel, issued a Certificate of Loss of Nationality to petitioner on the ground that he had expatriated himself by voting in the Israeli political election on July 30, 1951. This action was approved by the Passport Office of the Department of State on January 4, 1961, and, on May 3, 1965, by the State Department Board of Review (R. 11–12).

Petitioner then brought this action for a declaratory judgment in the United States District Court for the Southern District of New York, challenging the constitutionality of Section 401(e). The district court upheld the administrative determination under the authority of *Perez* v. *Brownell,* 356 U.S. 44 (R. 3–10), and the court of appeals affirmed (R. 12–19).

SUMMARY OF ARGUMENT

In *Perez* v. *Brownell,* 356 U.S. 44, this Court upheld the constitutionality of the provision involved in this case, stating that the measure was a reasonable exercise of the congressional power in the field of foreign relations and that the provision properly denoted an act reflecting a dilution of allegiance to this country. Petitioner contends that this Court's later expa-

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ness of these subjective contentions, maintaining that they were irrelevant to the question of loss of citizenship "since a specific intent or desire to lose or abandon American citizenship is not a requisite for expatriation under Section 401(e) of the Nationality Act of 1940" (R. 11).

triation decisions have indicated that the latter criterion is the controlling one. Whatever the soundness of this analysis, we submit that *Perez* should not be overruled, because Section 401(e) satisfies both criteria.

A. In enacting Section 401(e), Congress believed that involvement in the political processes of a foreign state by voting in a political election constituted an act of allegiance to that state inconsistent with allegiance to this country. Viewed in terms of the kind of election involved in this case, this was a rational judgment. An American citizen who (as here) votes in a nationwide election for a foreign legislature commits himself to the foreign state as a political entity.

A vote in such an election evinces a significant degree of involvement in the processes and policies of the foreign government. In addition, such a vote—a solemn and wholly voluntary act—may reasonably be interpreted by our legislature as a symbolic act of commitment to the processes and institutions of a foreign state inconsistent with allegiance to this country.

B. Additionally, as held in *Perez,* Congress could reasonably conclude that voting in a foreign political election has the potential of creating friction not only between this country and the nation in which the voting takes place, but with other countries as well. As this Court pointed out in *Perez,* and as the realities of the present international scene confirm, it is no idle possibility that by voting in a foreign election a citizen may cause serious international problems for this country. Whether for propaganda purposes or otherwise, foreign nations may view such political activity

on the part of American citizens, even if lawful in the state where the voting occurs, as the expression of official American positions. By terminating citizenship the moment that the voting occurs, Congress has adopted the most effective means of obviating that problem.

C. Petitioner's contention that the Section 401(e) violates First Amendment guarantees is patently unsound. To be sure, voting, like taking an oath of allegiance to a foreign state or formally renouncing American citizenship, is an act of political expression. However, the First Amendment does not bar a reasonable congressional judgment that the loss of American citizenship should attach to such acts.

ARGUMENT

CONGRESS HAS THE CONSTITUTIONAL POWER TO TREAT VOTING IN A FOREIGN STATE AS AN EXPATRIATING ACT

In 1958, this Court in *Perez* v. *Brownell,* 356 U.S. 44, sustained the constitutional power of Congress to provide (as it did in Section 401(e) of the Nationality Act of 1940)[3] that an American citizen, whether naturalized or native born, shall lose his citizenship by voting in a political election in a foreign state. In so ruling, the Court relied on the congressional power over foreign affairs, finding that a rational nexus existed between that "fundamental source of power and the ultimate legislative action" (356 U.S. at 58). In addition, the Court noted that the act of voting in a foreign political election was conduct inconsistent

[3] This is now, in substance, Section 349(a)(5) of the Immigration and Nationality Act of 1952.

with claims of American citizenship. The Court stated its rationale as follows (356 U.S. at 60–61):

> The importance and extreme delicacy of the matters here sought to be regulated demand that Congress be permitted ample scope in selecting appropriate modes for accomplishing its purpose. The critical connection between this conduct and loss of citizenship is the fact that it is the possession of American citizenship by a person committing the act that makes the act potentially embarrassing to the American Government and pregnant with the possibility of embroiling this country in disputes with other nations. The termination of citizenship terminates the problem. Moreover, the fact is not without significance that Congress has interpreted this conduct, not irrationally, as importing not only something less than complete and unswerving allegiance to the United States but also elements of an allegiance to another country in some measure, at least, inconsistent with American citizenship.

This Court's more recent expatriation decisions have neither overruled *Perez* nor, as one commentator has contended, rendered it "moribund."[4] On the contrary, the Court has been careful in each of these later cases[5] to distinguish the issues there involved

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[4] See Kurland, Foreword: *Equal in Origin and Equal in Title to the Legislative and Executive Branches of the Government*, 78 Harv. L. Rev. 143, 174, see also p. 168 (1964).

[5] See *Kennedy* v. *Mendoza-Martinez*, 372 U.S. 144, 162, 164, and *Schneider* v. *Rusk*, 377 U.S. 163, 166–168. Obviously, *Trop* v. *Dulles*, 356 U.S. 86, decided the same day as *Perez*, may not be fairly considered as having implicitly overruled *Perez*. In *Marks* v. *Esperdy*, 377 U.S. 214, decided the same

and the rulings there made from *Perez*. And it is clear that the view espoused in the dissents in *Perez* (356 U.S. at 62, 79, 84)—*i.e.*, that Congress lacks power to adopt denaturalization legislation except as to activity which "invariably involves a dilution of undivided allegiance sufficient to show a voluntary abandonment of citizenship" (356 U.S. at 75)—"has not yet commanded a majority of the entire Court." *Schneider* v. *Rusk*, 377 U.S. 163, 166.

Petitioner argues (Pet. Br. 8), however, that there has been a shift of emphasis in the Court's decisions subsequent to *Perez* from the first factor relied on there—a rational nexus between foreign voting and embroilment or embarrassment in the conduct of our foreign affairs—to the second—dilution of allegiance. He argues that, unless an act evinces a dilution of allegiance to this country, whatever its consequences in our foreign relations may be, it may not be deemed an act of expatriation. We do not take issue with this analysis because, even if it represents an accurate reading of the Court's decisions, it does not require the overruling of *Perez*. As we shall show, voting in a political election in a foreign state evinces a sufficient degree of commitment to that state (and a concommitant dilution of American allegiance) to justify the congressional decision to classify such voting as an expatriating act. In addition, the statute meets the constitutional requirements of due process because

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day as *Schneider* v. *Rusk*, *supra*, a finding of denationalization for having served in a foreign army (Section 349(a)(3) of the Immigration and Nationality Act of 1952) was affirmed, *per curiam*, by an equally divided Court.

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of the clear connection between foreign voting and the congressional power in the field of foreign affairs.

A. VOTING IN A POLITICAL ELECTION IN A FOREIGN STATE IS CONDUCT WHICH CONGRESS COULD RATIONALLY DEEM TO BE INCONSISTENT WITH CLAIMS OF AMERICAN CITIZENSHIP

1. Contrary to petitioner's contention (Pet. Br. 9–12), when Congress adopted Section 401(e), it did so, in large measure, because it felt voting by American citizens in a political election in another country was conduct inconsistent with unswerving fealty to this nation. This proposition is borne out by the legislative history detailed in *Perez* v. *Brownell, supra,* 356 U.S. at 48–57. We do not repeat that history here, except to note that the Cabinet Committee [6] (whose recommendation that Section 401(e) be adopted was accepted by Congress) made clear that it viewed foreign voting as an act of commitment to a foreign country. The report (printed in Hearings before the House Committe on Immigration and Naturalization, 76th Cong., 1st Sess. (1940) p. 491) stated in part:

> Taking an active part in the political affairs of a foreign state by voting in a political election therein is believed to involve a political attachment and practical allegiance thereto which is inconsistent with continued allegiance to the

[6] The Committee was established by President Roosevelt in 1933, at the request of the House Committee on Immigration and Naturalization and was composed of various members of the Cabinet. Its recommendations for revision and codification of then existing nationality laws provided the basis for the Nationality Act of 1940 (See *Perez*, *supra*, 356 U.S. at 52–53).

> United States, whether or not the person in question has or acquires the nationality of the foreign state. In any event it is not believed that an American national should be permitted to participate in the political affairs of a foreign state and at the same time retain his American nationality. The two facts would seem to be inconsistent with each other.

While discussion of the purpose of Section 401(e) at hearings before the House Committee (the Senate held no hearings) was sparse, it was in the same vein (See Hearings, *supra,* pp. 132, 286–287; *Perez,* 356 U.S. at 55). The fact that congressional debate did not focus on this provision is hardly a realistic basis for refusing to attribute to Congress the view of the Cabinet Committee. "It is clear that, as is so often the case in matters affecting the conduct of foreign relations, Congress was guided by and relied very heavily upon the advice of the Executive Branch, and particularly the State Department * * *. In effect, Congress treated the Cabinet Committee as it normally does its own committees charged with studying a problem and formulating legislation." *Perez,* 356 U.S. at 56. As Mr. Justice Frankfurter concluded (*id.* at 57) "[t]he legislators, counseled by those on whom they rightly relied for advice, were concerned about actions by citizens in foreign countries that create problems of protection and *are inconsistent with American allegience.*" (Emphasis added.)

Petitioner cursorily dismisses the pertinent views of the committee primarily responsible for the statute in question and relies instead on the fact that an earlier proposed statue providing for denationalization for

voting in a foreign election (introduced in the House of Representatives in 1935) was referred to in Congress as a "penalty." See H. Rep. No. 216, 74th Cong., 1st Sess., p. 1; 79 Cong. Rec. 2050. But it is significant to note that this 1935 House Report also spoke of foreign voting as evincing a "divided loyalty" and stated that a citizen who "becomes so much interested in the affairs of a foreign state as to voluntarily vote abroad" does not "hold United States citizenship so dear" (H. Rep. No. 216, 74th Cong., 1st Sess., p. 2). The notion that Section 401(e) is "penal" is merely another form of the argument, rejected in *Perez,* that the provision does not represent a proper regulatory objective; it does not advance the argument, but merely provides a label for a conclusion. See *Trop* v. *Dulles,* 356 U.S. 86, 94 (opinion of Warren, C.J.).[7] What emerges from the legislative history, therefore, is the fact that Congress, in passing this statute, did so in the expressed belief that it was denoting an act indicative of diluted allegiance.

2. It was reasonable, we submit, for Congress to conclude that the act of voting in a political election

[7] The 1950 Report of a House Subcommittee of the Judiciary Committee proposing to except from the reach of Section 401(e) those Americans who had voted in Italian elections in the 1940's does not lend support to the "penalty" argument (See Pet. Br. 11). While reference was made to the penalty language of the 1935 House Report, the committee also quoted the Cabinet Committee's views (set out in the text, *supra,* pp. 8–9) as to diluted allegiance pointing out that the Cabinet Committee's opinion "coincided" with those of the House Committee on Immigration and Naturalization which recommended the adoption of Section 401(e) (See H. Rep. No. 1469, 81st Cong., 2d Sess., p. 9).

in a foreign state manifests an attachment to another country sufficient to warrant expatriation. We do not argue that, in decreeing loss of citizenship as a consequence of such voting, Congress was "simply giving formal recognition to the inevitable consequence of the citizen's own voluntary surrender of citizenship." *Perez* v. *Brownell,* 356 U.S. 44, 69 (dissenting opinion). Not every act of voting in a foreign election invariably means that the person who votes intends, in fact, to abandon his United States citizenship. But subjective intent is not the standard by which the statute is to be tested. Thus, not every person who formally acquires the nationality of a foreign state by naturalization necessarily and inevitably transfers his subjective allegiance from the country of his birth to the country in which he acquires nationality. Yet it is not seriously doubted that Congress could legitimately declare that one who voluntarily acquires the nationality of another country thereby loses his United States citizenship. The proper test is whether the act (voting) generally has sufficient connotations of political commitment to another country to justify the loss of United States nationality. By this test, Section 401(e) is within the constitutional power of Congress.

Of particular significance here are this Court's decisions in *Savorgnan* v. *United States,* 338 U.S. 491, and *Mackenzie* v. *Hare,* 239 U.S. 299. In the former, this Court upheld loss of nationality, under a statute which provided for denationalization on taking an oath of allegiance to a foreign state, even though the petitioner, a native-born citizen, had taken such an

oath without intent to abandon her United States residence or to divest herself of American citizenship. Similarly, in *Mackenzie* the Court sustained a statute taking away the citizenship of an American woman during her marriage to a foreigner even though she had neither left the United States nor intended to lose her citizenship by such marriage. Both cases stand for the proposition that a subjective intent to retain citizenship does not bar loss of citizenship where the expatriating conduct is not only reasonably related to foreign affairs considerations but significantly conveys the concept of commitment to another nation.

Voting in a foreign election—both as a practical matter and as a matter of symbolic connotation—evinces such a commitment. In a democracy, voting is, for most people, the highest form of involvement in the political processes of the state. In practically every national election—and certainly so under Israel's system of straight-party voting and proportional representation [8]—a vote plays an integral role in determining how the government is to be constituted and what, in broad outline at least, its policies shall be. The performance of this function necessarily carries with it a commitment to the country involved. Surely, a vote cast in a national election in the United States connotes such commitment and allegiance.[9] The fact, noted in the Chief Justice's dissenting opin-

[8] See Krainés, *Government and Politics in Israel*, pp. 84–98 (1961).

[9] While the United Nations document cited by petitioner (Pet. Br. 13–14, n. 11) lists only the United States as expressly providing for expatriation on the basis of voting in a foreign elec-

ion in *Perez, supra,* 356 U.S. at 62, 77, that in certain American States non-citizens were permitted to vote in national elections until 1928 does not militate against this conclusion. In most of the period prior to 1928, this country was actively inviting immigration with the expectation that most of those who came would ultimately become citizens or at least throw in their lot with this country. In these circumstances, voting by aliens was allowed as a method to encourage their commitment to this country and as a sign that they had, in fact, developed such allegiance. It is significant in this connection that as our immigration policies became more restrictive, the right of aliens to vote contracted.

Section 401(e) applies this view to those citizens who exercise such cardinal rights in foreign political elections. It embodies the reasonable assumption that acts such as voting (or taking an oath of allegiance) are not usually done hurriedly or without thought, but only after solemn consideration. Like a solemn oath of allegiance, the ceremony of voting conveys the image of a purposeful act of political commitment to a foreign state. Of course, an American residing abroad must comply with the laws of the country in which he resides and if that law requires that he vote,

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tion, it shows that Luxembourg, Mexico, Venezuela, and New Zealand expatriate for "participating in foreign national rights or duties" and that Australia, Canada, Israel, Nicaragua, Pakistan, Switzerland, Union of South Africa, United Kingdom and Yugoslavia expatriate for "[i]ndicating oneself to be * * * disaffected" (*National Legislation Concerning Grounds for Deprivation of Nationality* (Report of United Nations General Assembly, International Law Commission, 5th Sess., 1953), p. 6).

or he is otherwise required to vote involuntarily, no loss of American citizenship follows therefrom. *Nishikawa* v. *Dulles,* 356 U.S. 129. But that is not this case. Here petitioner voted under no compulsion, but of his own free choice. Indeed, such voting, with its concomitant requirement of residence in Israel (see Warsoff, *Citizenship in the State of Israel,* 33 N.Y.U.L. Rev. 857 (1958)), could well be thought to signify a settled attachment to the foreign country.

It is not critical that, at the time petitioner voted in 1951, he was not an Israeli citizen and that citizenship was not thereby automatically conferred upon him.[10] See Warsoff, *supra,* p. 857. Just as it was not determinative whether Mrs. Savorgnan obtained Italian citizenship by taking an oath of allegiance to Italy, it is not crucial here how Israel treats voting by foreigners in its elections. The critical consideration is how the Congress of the United States could rationally treat that act. Congress could, we submit, reasonably attach to such conduct the same consequence that it has attributed to an oath of allegiance to a foreign state. Statements in *Schneider* v. *Rusk,* 377 U.S. 163, 169, that residence abroad does not indicate dilution of American citizenship because it may be compelled by considerations having nothing to do with political

[10] Israel did not have a nationality law in 1951, and residence, not citizenship, was a qualification for voting. By its 1952 Nationality Law, all Jewish immigrants were made Israeli citizens (retroactive to the date of their immigration or of the founding of the state, whichever was later), unless they executed a written disclaimer of Israeli citizenship. In the elections of 1955 and 1959—in which petitioner apparently also voted (see R. 1-2)—citizenship was a requirement for voting. Kraines, *Government and Politics in Israel,* pp. 85, 165, 168 (1961).

affiliation, does not weaken our argument here. The dispositive difference is that voluntary voting in a political election, unlike residence abroad, presupposes the absence of any compulsion except the solemn personal decision to participate intimately and openly in the political processes of a foreign government. It is, in short, not a necessary element of living abroad; it involves an independent and separate decision to participate in the political affairs of the foreign country. Congress could properly treat that decision as conduct signifying such attachment to the political processes and institutions of another country as to be inconsistent with undiluted allegiance to the United States.[11]

B. CONGRESS COULD REASONABLY CONCLUDE THAT EMBROILMENT OR EMBARRASSMENT IN THE CONDUCT OF FOREIGN AFFAIRS MIGHT STEM FROM AN AMERICAN CITIZEN'S VOTING IN A FOREIGN ELECTION.

The congressional decision that voting in a foreign political election signifies a sufficient commitment to another country to justify loss of United States nationality is strengthened by the fact that, as this Court held in *Perez,* such conduct also carries the potentiality of embarrassment in the conduct of our foreign affairs. This was fully discussed in the *Perez* decision (356 U.S. at 59):

[11] Since petitioner voted in a national Israeli election there is no occasion in this case to decide the validity of judicial and administrative rulings applying Section 401(e) to local elections in foreign countries (See Pet. Br. 14, n. 14). Whatever the case in local elections, voting in a national election reflects an active commitment to a foreign nation *qua* nation, and, accordingly, we submit, constitutes a subordination, if not a complete divestment, of a citizen's attachment to this nation.

> Experience amply attests that, in this day of extensive international travel, rapid communication and widespread use of propaganda, the activities of citizens of one nation when in another country can easily cause serious embarrassments to the government of their own country as well as to their fellow citizens. We cannot deny to Congress the reasonable belief that these difficulties might well become acute, to the point of jeopardizing the successful conduct of international relations, when a citizen of one country chooses to participate in the political or governmental affairs of another country. The citizen may by his action unwittingly promote or encourage a course of conduct contrary to the interests of his own government; moreover, the people or government of the foreign country may regard his action to be the action of his government, or at least as a reflection if not an expression of its policy. * * *

The accuracy of these observations is confirmed by the realities of the international scene. A national election in West Germany, South Africa, or India—or, for that matter, anywhere in the world—is certain to have ramifications beyond the geographical limits of the particular country in which the voting takes place. A national election in India would, for example, be viewed with acute concern in Pakistan. Similarly, the Arab states have a paramount interest in the course of political activities in Israel; and, of course, Israel regards the politics of Arab nations with close interest. Numerous other examples could be cited. Suffice it to say that in ways both direct and subtle the tense and volatile relationships among

various countries in the world bear heavily on the day-to-day conduct of this country's foreign policy.

In such circumstances, for Americans to interject themselves in the political processes of foreign nations can compound the difficulty facing this nation in the serious business of fashioning a viable foreign policy. The foreign state in which the voting occurs may charge this country with meddling, and sensitive problems of protection of the American citizen may result. But even if that state does not object to our citizens' voting, there is still the real threat that other countries with an interest in the outcome of that state's elections will consider voting by American citizens offensive. Justifiably or not, the vote of the citizen may be deemed to reflect the official views of the government; the individual American may be considered "as our spokesman or our operative." *Kennedy* v. *Mendoza-Martinez,* 372 U.S. 144, 187 (concurring opinion of Mr. Justice Brennan). The daily newspapers in recent years have reported countless incidents in which Americans visiting or residing in foreign lands have been accused of acting as governmental agents and engaging in conduct—often ostensibly quite innocuous—inimical to the host country. If such conduct can create international friction, it is surely not unreasonable for Congress to conclude that much more serious repercussions might result from our citizens' open participation in foreign elections.

As this Court held in *Perez,* "[t]he subtle influences and repercussions" which the problem poses require that it "be regulable on more than an *ad hoc* basis" (356 U.S. at 59). The Court there reasoned

that congressional action could not be narrowly circumscribed because (*id.* at 60):

> The importance and extreme delicacy of the matters here sought to be regulated demand that Congress be permitted ample scope in selecting appropriate modes for accomplishing its purpose. The critical connection between this conduct and loss of citizenship is the fact that it is the possession of American citizenship by a person committing the act that makes the act potentially embarrassing to the American Government and pregnant with the possibility of embroiling this country in disputes with other nations. The termination of citizenship terminates the problem.

There is no reason to depart from these principles. Congress has the "power to legislate generally, unlimited by proof of the existence of the evils in each particular situation" (*North Amer. Co.* v. *Securities & Exchange Commission,* 327 U.S. 686, 711), provided, of course, that the measures adopted are not "inappropriate to the difficulties to be dealt with." *Perez,* 356 U.S. at 60. It was the congressional decision that only by the corrective or loss of citizenship could the problems that foreign voting might create be thoroughly dispelled; automatic termination of citizenship the moment the ballot is cast removes the basis for international disputes before difficulties can arise. The remedy is doubtless effective. One can readily conceive of situations in which recriminations would not be stilled by an official disclaimer of responsibility after the fact or other formal representations that the individual voter does not reflect this

government's official position on particular foreign affairs issues.[9] Under Section 401(e), however, the same act which gives rise to the charge of intermeddling also terminates the citizenship of the alleged "meddler." Congress could reasonably conclude that in no more direct and meaningful way could this country make clear to the world that the vote of its citizen is not to be taken as evidence that this nation was actively interfering in the affairs of a foreign state.

The provision also serves as a warning to Americans residing abroad to refrain from the potentially embarrassing conduct of engaging in foreign electoral processes. It cannot be fairly said that citizens who vote in foreign political elections are without fair notice of the consequences which that act entails (see Pet. Br. 24–25). It is now more than twenty-five years since Section 401(e) was first adopted in the Nationality Act of 1940, and this provision has been continued by Congress in the Immigration and Nationality Act of 1952. During this period of time, American citizens residing abroad have been put on notice that Congress deemed such an act inconsistent with complete allegiance to this country and a source of foreign affairs problems. Surely petitioner, who first voted in Israel some eleven years after Section 401(e) was enacted, had such notice.[12] Having voted nonetheless, he may properly be deemed to have lost his American citizenship.

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[12] Apparently (see R. 1–2), he also voted again in national elections in 1955 and 1959.

C. THERE IS NO FIRST AMENDMENT BAR TO THE EXPATRIATING FORCE OF SECTION 401(e)

Petitioner's claim that the First Amendment precludes the enactment and enforcement of Section 401(e) is unsound. No one has a right under the United States Constitution to vote in a foreign election. Just as no one has the right to take an oath of allegiance to a foreign state or to renounce his American citizenship free from the reasonable consequences which Congress may attach to those acts, Congress may attach consequences to the act of voting in a foreign state. Cf. *Trop* v. *Dulles,* 356 U.S. 86, 104, 106, n. 2 (concurring opinion of Mr. Justice Brennan). As we have shown, Section 401(e) stems from the reasonable congressional determination that the act of voting implies a commitment to the foreign country in which the voting occurs and creates the potential for serious foreign affairs problems. Such a provision—one in effect, requiring that a person decide where his basic political allegiance lies—does not affect his right to speak as he pleases; it simply puts him to the choice of political affiliation. The right to speak does not carry with it the unfettered right to vote in any country one may choose. Cf. *Zemel* v. *Rusk,* 381 U.S. 1, 16–17.

CONCLUSION

It is respectfully submitted that *Perez* v. *Brownell*, 356 U.S. 44, should be followed and the judgment of the court of appeals affirmed.

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